

Senate Bill No. 41

CHAPTER 699

An act to amend Sections 10430, 10515, 10518, and 10526 of, to add Article 2.5 (commencing with Section 10510.4) to Chapter 2.1 of, and to add Article 7.8 (commencing with Section 10830) to Chapter 2.5 of, Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

[Approved by Governor October 8, 2003. Filed with
Secretary of State October 9, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

SB 41, Bowen. Public contracts: services.

(1) Existing law requires that every contractor who enters into a contract with the state or the University of California for \$10,000 or more be assigned an identification number by the Department of General Services or the university, and requires that if the contractor is a corporation or firm, the president's assigned number be used exclusively on each contract.

This bill would require each university campus to assign the identification numbers to contractors with whom the campus contracts, instead of all campuses using numbers assigned by the Regents of the University of California, provided that the regents are able to track all identification numbers centrally.

(2) Existing law requires that state or local government selection for the professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms be on the basis of demonstrated competence and professional qualifications, rather than competitive bidding, and imposes requirements for the implementation of this method of selection.

This bill would subject the University of California's selection for the professional services of any of those firms, including real property development services firms, as defined, to the same requirements.

(3) Existing law prohibits persons, firms, or their subsidiaries who are awarded state contracts for consulting services from submitting a bid or being awarded a contract on or after January 1, 2003, for any action related to the end product of the consulting services contract.

This bill would change that date to July 1, 2003. This bill would also specify that those provisions do not apply to consulting services

contracts that comply with the requirements for the selection of professional services firms, as provided.

(4) Existing law includes various prohibitions with respect to conflicts of interest of persons who are awarded state contracts or contracts with the University of California, or officers or employees of the state or the university who are contracting with the state or university either directly or through other entities.

This bill would additionally require the California State University to comply with those prohibitions.

The people of the State of California do enact as follows:

SECTION 1. Section 10430 of the Public Contract Code, as amended by Section 1 of Chapter 1122 of the Statutes of 2002, is amended to read:

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California and the Trustees of the California State University, except that Article 9 (commencing with Section 10420) shall apply to the Trustees of the California State University.

(b) (1) Transactions covered under Chapter 3 (commencing with Section 12100), except that Sections 10365.5, 10410, and 10411 shall apply to all transactions under that chapter.

(2) Notwithstanding paragraph (1), Section 10365.5 shall not apply to incidental advice or suggestions made outside of the scope of a consulting services contract.

(c) Except as otherwise provided in this chapter, any entity exempted from Section 10295. However, the Board of Governors of the California Community Colleges shall be governed by this chapter, except as provided in Sections 10295, 10335, and 10389.

(d) Transactions covered under Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Except as provided for in subdivision (c), members of boards or commissions who receive no payment other than payment for each meeting of the board or commission, payment for preparatory time, and payment for per diem.

(f) The emergency purchase of protective vests for correctional peace officers whose duties require routine contact with state prison inmates. This subdivision shall remain operative only until January 1, 1987.

(g) Spouses of state officers or employees and individuals and entities that employ spouses of state officers and employees, that are vendored to provide services to regional center clients pursuant to Section 4648 of the Welfare and Institutions Code if the vendor of services, in that



capacity, does not receive any material financial benefit, distinguishable from the benefit to the public generally, from any governmental decision made by the state officer or employee.

SEC. 2. Article 2.5 (commencing with Section 10510.4) is added to Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 2.5. Contracts with Private Architects, Engineering,
Environmental, Land Surveying, and Construction Project
Management Firms

10510.4. For purposes of this article, the following definitions apply:

(a) “Firm” means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(b) “Architectural, landscape architectural, engineering, environmental, and land surveying services” include those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and their employees may logically or justifiably perform.

(c) “Construction project management” means those services provided by a licensed architect, registered engineer, or licensed general contractor that meet the requirements of Section 10510.9 for management and supervision of work performed on university construction projects.

(d) “Environmental services” means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. “Environmental services” also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

(e) “Real property development services” means those services undertaken by a real estate developer in connection with the development of a developer-owned project on land owned or controlled by the university, including, but not limited to, environmental analysis, landscape planning, site design, market and financial feasibility, and other incidental services that a real estate developer may perform for the project.

10510.5. (a) Selection by the University of California for professional services of private architectural, landscape architectural,



engineering, environmental, land surveying, real property development services, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, the university shall adopt procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the university. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837 of the Government Code.

(b) These procedures shall specifically prohibit practices that might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit university employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section.

10510.6. (a) The University of California shall follow this section in negotiating fees and executing a contract for professional consulting services of a private architectural, landscape architectural, engineering, land surveying, environmental, real property development services, or construction project management firm.

(b) After providing notification to the successful firm of its selection, the university shall provide written instructions for the negotiations that are to follow. These instructions shall provide the private consulting firm with necessary information that shall allow the negotiations to proceed in an orderly fashion. Negotiations shall begin within 14 days after the successful firm has been notified of its selection or upon receipt of the cost proposal. The contractor should be notified if additional time is necessary to begin negotiations.

(c) Upon the completion of negotiations, the university and the private firm shall proceed to execute a contract that the university shall complete within 45 days. The contractor should be notified if additional time is necessary to complete the contract. The university and private firm shall work together to ensure the successful delivery of the requested services in a timely fashion.

(d) In the event an impasse is reached in negotiations, the university may terminate negotiations and enter into negotiations with the next qualified firm, in the same manner as prescribed in Section 10510.8 with respect to management services contracts.

10510.7. (a) In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, real property development services, and construction project management services,



the university shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(b) (1) Statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, real property development services, or construction project management services shall be made by the university through advertisements placed in the California State Contracts Register and in publications of the respective professional societies and organizations of persons that perform those services. Alternatively, the university may develop policies to provide for electronic statewide notice of the required announcements to ensure notification through, at a minimum, appropriate professional societies and organizations and the California State Contracts Register, to those persons that perform the services sought to be procured.

(2) The university, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the university, together with those that may be submitted by other firms regarding the proposed project.

(3) (A) The university, for each proposed project, shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(B) The university shall select, from the firms with which it conducted discussions in order of preference, based upon criteria established and published by the university, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(C) If a project announcement results in submissions from fewer than three qualified firms, the university may then select from the available qualified firms and shall document its efforts to receive submissions from additional firms.

(D) These procedures shall specifically prohibit practices that might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit university employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section.

(4) This subdivision does not apply to a contract for the services described in Section 10510.4 with a total contract cost of one hundred thousand dollars (\$100,000) or less, provided that the type of project for which the contract is awarded is identified by the university in an annual announcement, made in accordance with the provisions of paragraph (1),



that identifies the project needs of the university that are projected to have a total contract price of one hundred thousand dollars (\$100,000) or less.

10510.8. (a) The university shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, real property development services, and construction project management services at compensation that the university determines is fair and reasonable to the University of California.

(b) Should the university be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the university determines to be fair and reasonable to the University of California, negotiations with that firm shall be formally terminated. The university shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the university shall terminate negotiations. The university shall then undertake negotiations with the third most qualified firm.

(c) Should the university be unable to negotiate a satisfactory contract with any of the selected firms, the university shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this article until an agreement is reached.

10510.9. Any individual or firm proposing to provide construction project management services pursuant to this article shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

SEC. 3. Section 10515 of the Public Contract Code is amended to read:

10515. (a) No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract on or after July 1, 2003, for the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

(b) Subdivision (a) does not apply to either of the following:

(1) Any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract that amounts to no more than 10 percent of the total monetary value of the consulting services contract.



(2) Consulting services contracts that comply with Article 2.5 (commencing with Section 10510.4).

(c) (1) Subdivision (a) does not apply to any person, firm, or subsidiary awarded a consulting services contract by a University of California medical center when the provision of service, procurement of goods or supplies, or any other related action required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract, is necessary to avoid a competitive disadvantage in the hospital industry, improve patient care, protect the privacy of patient information, or avoid significant delay and additional expense.

(2) The University of California shall report within 30 days on any exemption granted under paragraph (1) to the Joint Legislative Budget Committee and the Department of Finance. The report shall include a description of the circumstances that warranted the exemption, the effects of the exemption on patient care or patient privacy, and a calculation of the projected costs savings to the institution as a result of the exemption.

SEC. 4. Section 10518 of the Public Contract Code is amended to read:

10518. (a) Except as otherwise provided in subdivision (b), each contractor who enters into a contract with a University of California campus for ten thousand dollars (\$10,000) or more shall be assigned an identification number by the chancellor of that university campus. Each contractor who has been assigned a number shall list it on each contract the contractor enters into with the university campus, regardless of the amount of the contract. In the case of a corporation or firm, the chancellor's assigned number shall be used exclusively on each contract with that particular chancellor's campus. The assigned number shall remain unchanged regardless of future name changes.

(b) If the identification numbers cannot be tracked centrally by the Regents of the University of California, then the regents, and not the chancellors, shall assign the identification numbers.

SEC. 5. Section 10526 is added to the Public Contract Code, to read:

10526. Sections 10522, 10523, 10524, and 10525 of this article do not apply to violations of Article 2.5 (commencing with Section 10510.4) of this chapter.

SEC. 6. Article 7.8 (commencing with Section 10830) is added to Chapter 2.5 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 7.8. Conflict of Interest

10830. (a) No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid or be awarded



a contract on or after July 1, 2003, for the provision of services, the procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

(b) This section does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract that amounts to no more than 10 percent of the total monetary value of the consulting services contract.

(c) This section does not apply to consulting services contracts subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

10831. No officer or employee of the California State University shall engage in any employment, activity, or enterprise for which the officer or employee receives compensation or in which the officer or employee has a financial interest if that employment, activity, or enterprise is sponsored or funded, or sponsored and funded, by any California State University department through or by a California State University contract unless the employment, activity, or enterprise is within the course and scope of the officer's or employee's regular California State University employment. No officer or employee in the California State University shall contract on his or her own individual behalf as an independent contractor with any California State University department to provide services or goods. This section shall not apply to officers or employees of the California State University with teaching or research responsibilities.

10832. (a) No retired, dismissed, separated, or formerly employed person of the California State University employed with the California State University or otherwise appointed to serve in the California State University may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decisionmaking process relevant to the contract while employed in any capacity by any California State University department. The prohibition of this subdivision shall apply to a person only during the two-year period beginning on the date the person left California State University employment.

(b) For a period of 12 months following the date of his or her retirement, dismissal, or separation from the California State University, no person employed in the California State University or otherwise appointed to serve in the California State University may enter into a contract with any California State University department, if he or she was employed by that department in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement, dismissal, or separation. The prohibition



of this subdivision shall not apply to a contract requiring the person's services as an expert witness in a civil case or to a contract for the continuation of an attorney's services on a matter he or she was involved with prior to leaving the California State University.

(c) This section does not prohibit the rehire or reappointment of California State University employees after retirement, consistent with California State University administrative policies, nor does it apply to inventors and authors of intellectual property licensed under technology transfer agreements.

10833. (a) Except as otherwise provided in subdivision (b), each contractor who enters into a contract with a California State University campus for ten thousand dollars (\$10,000) or more shall be assigned an identification number by the president of that California State University campus. Each contractor who has been assigned a number shall list it on each contract the contractor enters into with the California State University campus, regardless of the amount of the contract. In the case of a corporation or firm, the president's assigned number shall be used exclusively on each contract with that president's campus. The assigned number shall remain unchanged regardless of future name changes.

(b) If the identification numbers cannot be tracked centrally by the Trustees of the California State University, then the trustees, and not the presidents, shall assign the identification numbers.

